

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>RODNEY WELLS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	<b>No. 05-6781</b>
<b>JAMES T. WYDNER</b>	:	
	:	<b>No. 06-270</b>
	:	

**DuBOIS, J.**

**JUNE 12, 2006**

**MEMORANDUM & ORDER**

**MEMORANDUM**

**I. INTRODUCTION**

On April 26, 1985, a jury sitting in the Court of Common Pleas for Philadelphia County convicted petitioner, Rodney Wells, of robbery, burglary, criminal conspiracy, and possession of an instrument of crime. He is currently a state prisoner currently serving an aggregate term of imprisonment of twenty-five to fifty years and a consecutive term of fifteen years probation. On August 27, 2004, Wells filed a pro se federal habeas petition, which this Court denied as untimely by Order dated September 1, 2005. Wells v. Palakovitch, Civ. No. 04-4072, 2005 U.S. Dist. Lexis 19068 (E.D. Pa. Sept. 1, 2005).

Presently before the Court are the following five pro se motions:

1. Petitioner's Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6) (hereinafter "Motion 1");
2. Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) (hereinafter "Motion 2");
3. Motion for Compulsory Disclosure Discovery and Inspection (hereinafter "Motion 3");

4. Motion to Vacate Judgment of Sentence Pursuant to Federal Rules of Civil Procedure 60(b)(1) and (6) In the Interest of Justice As A Remedy for the Federal Courts Resolutions Doctrine and Is Contrary to the Supremacy Clause of the United States Constitution (hereinafter "Motion 4"); and
5. Petitioner [sic] Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) Based Upon Newly Discovered Evidence, Which Has Subsequently Become Available (hereinafter "Motion 5").

Wells filed Motions 1, 2, 4, and 5 pursuant to Federal Rule of Civil Procedure 60(b), and Motion 3 in support of Motion 2.

For the reasons set forth in this Memorandum, the Court dismisses Motion 1, and transfers Motions 2, 3, 4, and 5 to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize the Court to consider such motions.

## **II. BACKGROUND**

In this Memorandum, the Court relies on the detailed factual and procedural history set forth in U.S. Magistrate Judge Thomas Rueter's Report and Recommendation dated June 29, 2005 in Wells v. Palakovitch. See Report and Recommendation 1-2. The Court adopted that Report and Recommendation by Order dated September 1, 2005. Wells v. Palakovitch, Civ. No. 04-4072, 2005 U.S. Dist. Lexis 19068 (E.D. Pa. Sept. 1, 2005). For purposes of analyzing the five pending motions, the Court notes that the key fact is that the Court denied Wells's pro se federal habeas petition by Order dated September 1, 2005. Id.

## **III. DISCUSSION**

### **A. SUMMARY OF PENDING MOTIONS**

In Motions 1, 2, 4, and 5, Wells argues that his constitutional rights were violated during

his trial and at sentencing, and in Motion 3, Wells moves to discover whether a constitutional violation occurred in his case.

Specifically, in Motion 1, Wells argues that he was denied due process and equal protection because the trial court sentenced him more harshly than his co-defendants, abused its discretion, and was excessive in imposing sentence.

In Motion 2, Wells contends that newly discovered evidence warrants relief in his case. Wells argues that the newly discovered evidence – namely, notes from the “Sagel Lecture,” a 1990 lecture by then Assistant District Attorney Sagel, who petitioner asserts was the Director of Training and the prosecutor in petitioner’s case – shows that the Commonwealth used its peremptory jury strikes in a racially discriminatory manner. Citing Batson v. Kentucky, 476 U.S. 79 (1986), and Miller-El v. Dretke, 125 S.Ct. 2317, 2332 (2005), Wells claims the Commonwealth denied him his rights under the Sixth, Eighth, and Fourteenth Amendments of the U.S. Constitution and the corresponding provisions of the Pennsylvania Constitution.

In Motion 3, citing Brady v. Maryland, 373 U.S. 83 (1963), petitioner moves for discovery and inspection of the notes that Sagel took in petitioner’s case to determine whether Sagel in fact used his peremptory strikes in a racially discriminatory manner.

In Motion 4, Wells claims: (1) the suppression of Brady material violated his Fifth and Fourteenth Amendment rights; (2) trial counsel’s ineffectiveness violated his Sixth Amendment rights; and (3) appellate counsel was ineffective for failing to appeal violations of his Confrontation Clause rights.

Finally, in Motion 5, citing Banks v. Dretke, 124 S. Ct. 1256 (2004), Wells claims due process violations on the grounds that (1) the Commonwealth failed to disclose evidence that

Alfred Keith Johnson, a key Commonwealth witness, was granted immunity from drug prosecutions; and (2) the Commonwealth failed to provide the defense with discovery as to all deals, favors, and promises concerning all witnesses.

## **B. STANDARD FOR BRINGING FED. R. CIV. P. 60(b) MOTIONS**

Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment under a limited set of circumstances, including fraud, mistake, and newly discovered evidence. See Fed. R. Civ. P. Rule 60(b).<sup>1</sup> The general purpose of the Rule is “to strike a proper balance between the conflicting principles that litigation must be brought to an end and that justice must be done.” Boughner v. Secretary of Health, Education and Welfare, 572 F.2d 976, 977 (3d Cir. 1978). “The decision to grant or deny relief pursuant to Rule 60(b) lies in the ‘sound discretion of the trial court guided by accepted legal principles applied in light of all the relevant circumstances.’” United States v. Hernandez, 158 F. Supp. 2d 388, 392 (D. Del. 2001) (quoting Ross v. Meagan, 638 F.2d 646, 648 (3d Cir. 1981)).

## **C. APPLICATION OF THE AEDPA LIMITATION ON SECOND OR SUCCESSIVE HABEAS PETITIONS TO FED. R. CIV. P. 60(b) MOTIONS**

Before reaching the merits of petitioner’s 60(b) motions, the Court must determine whether the motions are, in essence, second or successive 28 U.S.C. § 2254 habeas motions.

---

<sup>1</sup> Rule 60(b) provides that on motion and upon such terms as are just, the court may relieve a party or a party’s legal representative from a final judgment order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

Such a determination is necessary because the Anti-Terrorism and Effective Death Penalty Act (AEDPA) limits a petitioner's ability to bring a second or successive habeas motion. Before filing a second or successive § 2254 habeas motion, a petitioner must obtain an order from the appropriate court of appeals authorizing the district court to consider the motion. See 28 U.S.C. § 2244(b)(3)(A).<sup>2</sup>

The Supreme Court and the Court of Appeals for the Third Circuit have ruled that a Rule 60(b) motion should be construed as a second or successive habeas petition where the 60(b) motion challenges the underlying state conviction. See Gonzalez v. Crosby, 125 S.Ct. 2641 (June 23, 2005); Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004). This Court examines these cases to determine their applicability to the pending motions.

At issue in Gonzalez v. Crosby was whether the petitioner could challenge the district court's prior ruling on the AEDPA statute of limitations through a Rule 60(b) motion after the federal courts had denied the petitioner habeas corpus relief from his state conviction under 28 U.S.C. § 2254. 125 S.Ct. at 2644-45. The Supreme Court concluded that the petitioner's Rule 60(b) motion was not the equivalent of a successive habeas petition because the motion attacked a defect in the integrity of the federal habeas proceedings, not the underlying state conviction. Id. at 2648. As a result, the Court held that the district court could rule on the Rule 60(b) motion without prior authorization by the court of appeals. Id. at 2651. However, the Court cautioned that "[u]sing Rule 60(b) to present new claims for relief from a state court's judgment of

---

<sup>2</sup>Section 2244(b)(3)(A) of the AEDPA provides in pertinent part: "Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application."

conviction – even claims couched in the language of a true Rule 60(b) motion – circumvents AEDPA’s requirement that a new claim be dismissed unless it relies on either a new rule of constitutional law or newly discovered facts.” Id. at 2647 (citing § 2244(b)(2)).

The Gonzalez decision is consistent with the Third Circuit decision in Pridgen v. Shannon, 380 F.3d 721 (3d Cir. 2004). In Pridgen, the Court noted that, by enacting the AEDPA, Congress intended to limit the ability of a prisoner to file “an endless stream of habeas petitions,” and held that “when the Rule 60(b) motion seeks to collaterally attack the petitioner’s underlying conviction, the motion should be treated as a successive habeas petition.” Id. at 727.

The Court concludes that, under Gonzalez and Pridgen, petitioner’s 60(b) motions – i.e., Motions 1, 2, 4, and 5 – and the discovery motion filed in relation to one 60(b) motion – i.e., Motion 3 – must be construed as second or successive habeas corpus motions because Wells alleges that his trial and his sentencing were fraught with constitutional violations. This type of collateral attack on an underlying state conviction is precisely what the AEDPA sought to limit.

#### **D. DISMISSAL OF MOTION 1; TRANSFER OF MOTIONS 2, 3, 4, AND 5 TO COURT OF APPEALS**

Under the circumstances presented, the Court must either dismiss petitioner’s motions as unauthorized successive habeas petitions, see Nunez v. United States, 96 F.3d 990, 991 (7th Cir. 1996); Peterson v. Brennan, 2004 U.S. Dist. Lexis 11860, \*36 (E.D.Pa. 2004), or transfer the motions to the appropriate court of appeals pursuant to 28 U.S.C. § 1631 (2005),<sup>3</sup> see Coleman v.

---

<sup>3</sup>28 U.S.C. § 1631 (2005) provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action or appeal to any other such court in which the action or appeal could have been brought at the time it was filed or noticed, and the action or appeal shall proceed as if it had been filed or

United States, 106 F.3d 339, 341 (10th Cir. 1997); Peterson, 2004 U.S. Dist. Lexis at \*36.

Because the Court sees absolutely no ground for petitioner to succeed on the claims he raises in Motion 1 – that he was denied due process and equal protection because the trial court sentenced him more harshly than his co-defendants, abused its discretion, and was excessive in imposing sentence – the Court dismisses that motion without prejudice as an unauthorized habeas petition. The Court notes that, in the Third Circuit, a certificate of appealability from the denial of a Rule 60(b) motion is granted only if the petitioner makes: “(1) a credible showing that the district court’s procedural ruling was incorrect; and (2) a substantial showing that the underlying habeas petition alleges a deprivation of constitutional rights.” Morris v. Horn, 187 F.3d 333, 340 (3d Cir. 1999). The Court finds that petitioner has not made such a showing, and therefore it will not issue a certificate of appealability as to Motion 1.

To avoid further delay, the Court orders the remaining motions – Motions 2, 3, 4, and 5 – transferred to the United States Court of Appeals for the Third Circuit. The Court of Appeals must decide whether to authorize this Court to consider those four motions as successive habeas petitions.

#### **IV. CONCLUSION**

For the foregoing reasons, the Court does not reach the merits of any of the pending motions. The Court dismisses Motion 1 (“Petitioner’s Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6)”) without prejudice. The Court will not issue a certificate of appealability as to this motion because petitioner has not made a substantial showing of a

---

noticed for the court to which it is transferred on the date upon which it was actually filed in or noticed for the court from which it is transferred.

constitutional right as required under 28 U.S.C. § 2253(c).

The Court transfers Motion 2 (“Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2)”), Motion 3 (“Motion for Compulsory Disclosure Discovery and Inspection”), Motion 4 (“Motion to Vacate Judgment of Sentence Pursuant to Federal Rules of Civil Procedure 60(b)(1) and (6) In the Interest of Justice As A Remedy for the Federal Courts Resolutions Doctrine and Is Contrary to the Supremacy Clause of the United States Constitution”), and Motion 5 (“Petitioner [sic] Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) Based Upon Newly Discovered Evidence, Which Has Subsequently Become Available”) to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider those motions as successive habeas petitions.

An appropriate Order follows.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>RODNEY WELLS</b>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	<b>No. 05-6781</b>
<b>JAMES T. WYDNER</b>	:	
	:	<b>No. 06-270</b>
	:	

**ORDER**

**AND NOW**, this 12th day of June, 2006, upon consideration of Petitioner's  
Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6) (Document No.  
1, filed December 23, 2005),<sup>1</sup> Amended Petition/Motion Pursuant to Federal Rules of Civil  
Procedure 60(b)(2) (Document No. 2, filed February 6, 2006),<sup>2</sup> Motion for Compulsory  
Disclosure Discovery and Inspection (Document No. 3, filed February 9, 2006),<sup>3</sup> Motion to  
Vacate Judgment of Sentence Pursuant to Federal Rules of Civil Procedure 60(b)(1) and (6) In  
the Interest of Justice As A Remedy for the Federal Courts Resolutions Doctrine and Is Contrary  
to the Supremacy Clause of the United States Constitution (Document No. 1, filed January 20,  
2006),<sup>4</sup> and Petitioner [sic] Amended Petition/Motion Pursuant to Federal Rules of Civil

---

<sup>1</sup> Petitioner's Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6) (Document No. 1, filed December 23, 2005) was filed under Civil Action No. 05-6781.

<sup>2</sup> Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) (Document No. 2, filed February 6, 2006) was filed under Civil Action No. 05-6781.

<sup>3</sup> Motion for Compulsory Disclosure Discovery and Inspection (Document No. 3, filed February 9, 2006) was filed under Civil Action No. 05-6781.

<sup>4</sup> Motion to Vacate Judgment of Sentence Pursuant to Federal Rules of Civil Procedure 60(b)(1) and (6) In the Interest of Justice As A Remedy for the Federal Courts Resolutions Doctrine and Is Contrary to the Supremacy Clause of the United States Constitution (Document No. 1, filed January 20, 2006) was filed under Civil Action No. 06-0270.

Procedure 60(b)(2) Based Upon Newly Discovered Evidence, Which Has Subsequently Become Available (Document No. 2, filed May 9, 2006),<sup>5</sup> for the reasons set forth in the attached Memorandum, **IT IS ORDERED** as follows:

1. Petitioner's Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(3)(4) and (6) (Document No. 1, filed December 23, 2005), filed in Civil Action No. 05-6781, is **DISMISSED WITHOUT PREJUDICE**;
2. Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) (Document No. 2, filed February 6, 2006), filed in Civil Action No. 05-6781, is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider that motion as a successive habeas motion;
3. Motion for Compulsory Disclosure Discovery and Inspection (Document No. 3, filed February 9, 2006), filed in Civil Action No. 05-6781, is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider that motion as a successive habeas motion;
4. Motion to Vacate Judgment of Sentence Pursuant to Federal Rules of Civil Procedure 60(b)(1) and (6) In the Interest of Justice As A Remedy for the Federal Courts Resolutions Doctrine and Is Contrary to the Supremacy Clause of the United States Constitution (Document No. 1, filed January 20, 2006), filed in

---

<sup>5</sup> Petitioner [sic] Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) Based Upon Newly Discovered Evidence, Which Has Subsequently Become Available (Document No. 2, filed May 9, 2006) was filed under Civil Action No. 06-0270.

Civil Action No. 06-0270, is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider that motion as a successive habeas motion; and,

5. Petitioner [sic] Amended Petition/Motion Pursuant to Federal Rules of Civil Procedure 60(b)(2) Based Upon Newly Discovered Evidence, Which Has Subsequently Become Available (Document No. 2, filed May 9, 2006), filed in Civil Action No. 06-0270, is **TRANSFERRED** to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C. § 1631 for a decision on the question whether to authorize this Court to consider that motion as a successive habeas motion.

**BY THE COURT:**

---

**JAN E. DuBOIS, J.**